

COMMISSION
SECRETARIAT**FEDERAL ELECTION COMMISSION**999 E Street, N.W.
Washington, D.C. 20463

2005 FEB -4 P 4: 15

FIRST GENERAL COUNSEL'S REPORT**SENSITIVE**

MUR: 5475

DATE COMPLAINT FILED: July 6, 2004

DATE OF NOTIFICATION: July 13, 2004

DATE ACTIVATED: October 14, 2004

EXPIRATION OF SOL: October 1, 2008

COMPLAINANT: Melanie Sloan, Citizens for Responsibility and Ethics in Washington**RESPONDENTS:** Nader for President 2004 and
Carl M. Mayer, in his official capacity as treasurer¹
Theresa Amato²
Citizen Works³**RELEVANT STATUTES:** 2 U.S.C. § 441b(a)
2 U.S.C. §§ 434(a), (b)**INTERNAL REPORTS CHECKED:** Disclosure Reports**FEDERAL AGENCIES CHECKED:** None**I. INTRODUCTION**

This matter stems from a complaint filed by Citizens for Responsibility and Ethics in Washington ("CREW") alleging that Citizen Works made prohibited corporate contributions to Nader for President 2004 ("Nader") by subsidizing the committee's rent. Upon review of the complaint and the responses, including sworn affidavits in support of the response and a

¹ The complaint in this matter named Clarissa Peterson as a respondent since she was the treasurer for Nader for President 2004 when the complaint was filed. But a few months later, Carl Mayer took her place as treasurer. See Nader for President 2004, November 24, 2004, Statement of Organization. Accordingly, we have named Mr Mayer, in his official capacity as treasurer, as a respondent in this matter.

² Theresa Amato served as campaign manager for Nader for President 2004

³ Citizen Works, founded by Ralph Nader in 2001, is a non-profit corporation organized under section 501(c)(3) of the Internal Revenue Code

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1 supplemental response provided by Nader to clarify a few facts, this Office recommends that the
2 Commission find no reason to believe that Citizen Works made prohibited corporate
3 contributions to Nader and close the file.

4 The complaint in this matter was amended to include allegations that Oregon Citizens for
5 a Sound Economy, the Oregon Family Council, Bush-Cheney '04 and the Oregon Republican
6 Party made prohibited corporate contributions or illegal in-kind contributions to Nader by paying
7 for activities designed to get Nader on the ballot in Oregon. Because the Oregon ballot access
8 allegations in this matter are similar to the ballot access allegations in MUR 5489, we
9 recommend that the Commission sever the Oregon ballot access respondents and allegations in
10 the Amended Complaint and add them to MUR 5489. In accordance with that recommendation,
11 we propose to address the Oregon ballot access issues in the First General Counsel's Report in
12 MUR 5489

13 **II. FACTUAL AND LEGAL ANALYSIS**

14 CREW alleges that Citizen Works made corporate contributions to Nader by subleasing
15 its office space to the committee for half the fair market value in violation of section 441b(a) of
16 the Federal Election Campaign Act of 1971, as amended ("the Act"). Complaint at ¶¶ 7, 11. In
17 addition, CREW asserts that Nader shared a receptionist and telephone services with Citizen
18 Works and that the committee used Citizen Works' computers, furniture and other services, all
19 without compensation. *Id.* at ¶¶ 8-9. Finally, CREW alleges that Nader accepted prohibited
20 contributions from Citizen Works and failed to report them. *Id.* at ¶¶ 9-10.

21 In support of its allegations, CREW attached an article published in the Washington Post
22 James V. Grimaldi, *Nader Had Campaign Office at Charity. Situation Raises Ethical Questions*,
23 WASHINGTON POST, June 13, 2004. According to the article, Citizen Works' suite comprised
24 approximately 5,000 square feet. Citing unidentified real estate brokers, the article stated that
25 the market rate for rental office space in that area was about \$30 per square foot annually. *Id.*

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1 Thus, the article estimated that the rent for Citizen Works' suite totaled approximately \$12,500 a
2 month. *Id.* However, Nader paid only \$6,700 a month in rent between November 2003 and
3 February 2004, according to reports it filed with the Commission. *Id.*

4 Nader responded that because it leased less than half of Citizen Works' office space but
5 paid slightly more than half of the rent, it received no rent subsidy from Citizen Works or any
6 other prohibited corporate contribution from the non-profit.⁴ *See* Response of Nader for
7 President 2004 in MUR 5475 ("Nader Response"), July 30, 2004 at page 4. Nader explained that
8 it leased 900 square feet of Citizen Works' office space, equal to 44% of the office space,
9 exclusive of common areas.⁵ *Id.* Nader stated that the total monthly rent for the suite was
10 \$13,266, and its "monthly payment of \$6,700 equaled 50.05 per cent (or slightly more than half)
11 of Citizen Works' total monthly lease payment, even though the campaign was leasing less than
12 half the space." *Id.* (emphasis in original).

13 In further support of its claim that it paid fair market value for the office space, Nader
14 submitted the affidavit of Alexandra Arace, Citizen Work's office manager, who was responsible
15 for advertising and showing the suite to potential lessees and preparing the subleases. *See*
16 Affidavit of Alexandra Arace ("Arace Affidavit") at ¶¶ 3-4. She stated that Nader paid the same
17 amount per square foot of office space as Citizen Works' other sublessees.

18 Citizen Works advertised and rented individual furnished offices of
19 approximately 120 square feet for \$900/month. I used these figures as a

⁴ Citizen Works filed a response that was identical in substance to that filed by Nader

⁵ Ambiguity over the common areas led this Office to request a supplemental response from Nader, which we received on December 14, 2004 *See* Attachment 1, Supplemental Response of Nader for President 2004 ("Nader Supplemental Response"), December 14, 2004 In the original response, Nader's attorney wrote that Nader sublet 900 square feet from Citizen Works and that this left a remainder of 1,130 square feet, which was rented by Citizen Works and five of its sublessees *See* Nader Response at 4 According to Nader's attorney, the total square footage of the suite was 2,030 square feet (900 + 1,130) However, in another affidavit submitted on behalf of Nader, Taylor Hillenmeyer, a representative of the property management company for the building, stated that the total square footage of the suite was 4,371 square feet *See* Affidavit of Taylor Hillenmeyer ("Hillenmeyer Affidavit"), ¶ 3 In response to our request for clarification, Nader's attorney explained that his 2,030 square foot figure did not include square footage attributable to common areas *See* Nader Supplemental Response, page 1 Mr Hillenmeyer's 4,371 square foot figure, on the other hand, was a gross figure and included the common areas *Id.*

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base to determine a consistent rental rate for each of the sublettors,
including the Nader 2004 Presidential Exploratory Committee.

Id. at ¶ 8. Applying Ms. Arace's formula (\$900 for 120 square feet) to Nader's square footage results in an approximate rental value for the office space of \$6,714 (895.2 square feet x \$7.50).⁶ Nader actually paid \$6,700 per month.

Nader also submitted the affidavit of Taylor Hillenmeyer, Vice President of Leasing for the property management company in charge of Citizen Works' building. Mr. Hillenmeyer stated that Citizen Works paid \$36.42 per square foot per year for 4,371 total square feet (office space and common areas), or \$13,267 per month. *See* Hillenmeyer Affidavit at ¶¶ 3, 11. This, he said, constituted fair market value for property in the area. *Id.* at ¶ 12. As of July 2004, the date of his affidavit, his company was writing leases for space in the same building at \$35.50 to \$36.00 per square foot, *id.* at ¶ 13, or \$5 to \$6 higher than the \$30 per square foot price quoted in the Washington Post article submitted in support of the complaint.

It appears that the complaint mistakenly assumed that Nader leased 100% of the Citizen Works suite and that the committee only paid for half of the suite.⁷ In fact, Nader used only 44% of the office space in the suite during the period covered by the complaint, November 2003 through February 2004. *See* Nader Response at 4. The remainder of the office space was occupied by Citizen Works and five of its sublessees. *Id.* Nader's payment of approximately half of the fair market value of the suite was thus payment of fair market value for the office space it used and did not reflect a contribution to it from Citizen Works.

⁶ In the supplemental response, Nader's counsel explains that the committee actually rented 895.2 square feet, but that for ease of calculation, the figure was rounded to 900 square feet. *See* Nader Supplemental Response at 1.

⁷ CREW's confusion regarding the amount of office space Nader rented from Citizen Works is understandable in hindsight. When the complaint was filed, in July 2004, Nader occupied 100% of the Citizen Works suite. It was not unreasonable for CREW to assume that Nader had occupied the whole of the premises during the entire period of its sublease. Indeed, in April 2004 Nader took over the whole of the suite. *See* Response of Citizen Works, July 30, 2004, page 2. From that time on, reports filed with the Commission show Nader paying between \$12,000 and \$14,000 a month to the building owner for rent and occupancy. But prior to that, from November 2003 through February 2004, Nader reported paying rent of only \$6,700 per month. *See supra*, page 3.

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1 Nader satisfactorily refuted all of the other allegations in the complaint. While the
2 complaint alleged that Nader did not pay for the services of a receptionist, Complaint at ¶ 8,
3 Matthew Bradley, Nader's office manager, averred that he did the jobs normally ascribed to a
4 receptionist; he answered the phone, greeted visitors, and distributed the mail for the committee.
5 See Affidavit of Matthew Bradley at ¶ 3. Moreover, Ms. Arace stated that the suite as a whole
6 did not have a receptionist, much less a shared receptionist. See Arace Affidavit at ¶ 10. Thus,
7 Nader could not have shared Citizen Works' receptionist. Mr. Bradley and Ms. Arace also stated
8 that the committee paid for its own computers, office supplies, Internet connection and facsimile
9 telecopier. See Bradley Affidavit at ¶ 6, Arace Affidavit at ¶ 11. In response to the allegation
10 that Nader did not pay for its phone lines, Nader submitted a telephone bill showing that it paid
11 for that phone line. See Attachment to Bradley Affidavit. Mr. Bradley explained that the line
12 had been assigned to another Citizen Works' sublessee in the past and that after that organization
13 left the premises, the line was assigned to Nader. See Bradley Affidavit at ¶ 5, see also Arace
14 Affidavit at ¶ 13. Finally, Mr. Hillenmeyer and Ms. Arace state in their affidavits that Nader
15 subleased furnished office space from Citizen Works. See Hillenmeyer Affidavit at ¶¶ 8-9;
16 Arace Affidavit at ¶ 9. Thus, the cost of the furniture was included in the sublease and no
17 contribution resulted.

18 Because Nader's response directly and completely refutes the complaint's allegations,
19 this Office recommends the Commission find no reason to believe that Citizen Works made
20 prohibited corporate contributions to Nader, that Nader accepted such contributions, or that
21 Nader failed to report such contributions.

22 **III. RECOMMENDATIONS**

23
24
25 1 Find no reason to believe that Citizen Works violated the Act as alleged in the
26 original complaint in MUR 5475 and close the file with respect to it.
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2. Find no reason to believe that Nader for President 2004 and Carl M. Mayer, in his official capacity as treasurer, or Theresa Amato violated the Act as alleged in the original complaint in MUR 5475 and close the file with respect to them.
3. Sever the allegations and respondents in the Amended Complaint in MUR 5475 and add these allegations and respondents to MUR 5489.
4. Close the file in MUR 5475.
5. Send the appropriate letters.


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2/4/05

Date

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Attachment

1. Supplemental Response of Nader for President 2004, December 14, 2004.